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7. Evidence (§ 117*)—Admissible, Though Remote, in Connection with Other Evidence.—In action on a note, where defendant asserted that it was a forgery, and that plaintiff had forged it in pursuance of a general scheme of fraud, testimony that plaintiff claimed to have notes in various amounts against two, who denied any such were ever in existence, though relating to plaintiff's assertions some years prior to the date of note sued on, is not objectionable on the ground of remoteness, where there was other evidence tending to show at more recent dates plaintiff still claimed to have such notes.

8. Appeal and Error (§ 1050 (1*))—Admission of Immaterial Evidence Harmless Error.—In an action on a note, where defendant claimed it was a forgery and asserted that plaintiff was guilty of a general scheme to defraud, the admission of testimony that plaintiffs showed the witness another note signed as surety by defendant's intestate, the alleged maker, without any showing to impeach genuineness of such instrument, held harmless.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 582.]

9. Witnesses (§ 177*)—Competency as to Transactions with Persons Since Deceased.—In an action against administratrix on a note claimed to have been executed by her intestate, where she asserted that it was a forgery, and had been prepared by plaintiff in pursuance of a general scheme to defraud, and offered evidence to show that plaintiff claimed to hold notes against two persons, when in fact he did not, held that, under Code, § 3346, subd. 2, plaintiff was not a competent witness to deny such evidence.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 944; 15 Va.-W. Va. Enc. Dig. 1095.]

10. Appeal and Error (§ 1002*)—Verdict on Conflicting Evidence Conclusive.—A verdict on conflicting evidence is conclusive on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

Error to Circuit Court, Lee County.

Action by T. P. Ely against one Gray, the administratrix of G. C. Duff, deceased. There was a judgment for defendant. and plaintiff brings error. Affirmed.

J. C. Noel, of Pennington Gap, for plaintiff in error.

Davidson & Robinett and *Pennington & Cridlin*, all of Jonesville, for defendant in error.

CITY OF RADFORD *v.* BROOKS.

Sept. 17, 1919.

[100 S. E. 664.]

1. Pleading (§ 40*)—Time for Filing of Declaration.—The one-month period "after process is returned executed" within which declaration or bill is required to be filed under Code 1904, § 3241, is to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

be computed from the return day, and not from a previous day on which the process may have been served.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 550.]

2. Dismissal and Nonsuit (§ 81 (5)*)—Reinstatement of Case Dismissed During Vacation.—Where clerk dismissed suit during vacation without authority to so do, court during following term properly reinstated case, under Code 1904, § 3293.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 708; 15 Va.-W. Va. Enc. Dig. 295; 16 Va.-W. Va. Enc. Dig. 422.]

3. Pleading (§ 6*)—Allegation of Matters of Law Judicially Noticed Not Proper.—It is the function of the declaration to set out facts, and not matters of law of which the court takes judicial notice.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 218; 8 Va.-W. Va. Enc. Dig. 640.]

4. Pleading (§ 192 (3)*)—Unnecessary Allegation of Legal Duty Not Ground of Demurrer.—Allegation of a legal duty, though not unusual, is not essential, and, if wrongly stated, is not a ground of demurrer.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 487.]

5. Trial (§ 156 (1)*)—Effect of Demurrer to Evidence.—Demurrer to the evidence submits the case to the court on the law and the evidence, and court's attention can be drawn to erroneous statement of legal duty in declaration.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 515.]

6. Trial (§ 256 (14)*)—Instruction to Cure Erroneous Allegation of Legal Duty.—If erroneous allegation of legal duty in declaration affects the measure of damages, the correct practice is to have court instruct jury on the subject.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 745; 17 Va.-W. Va. Enc. Dig. 322.]

7. Municipal Corporations (§ 768 (1)*)—Liability of City For Defective Sidewalk.—Where sidewalk was out of repair and in unsafe condition, a part thereof having been entirely removed and a number of boards missing, city was negligent in not making repairs, and was liable to pedestrian who tripped and was injured because of sidewalk's defective condition.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 898.]

Error to Corporation Court of Radford.

Action by Ellen M. Brooks against the City of Radford. Judgment for plaintiff, and defendant brings error. Affirmed. *Harless & Colhoun*, of Christiansburg, and *H. C. Tyler*, of East Radford, for plaintiff in error.

H. C. Gilmer, of Pulaski, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.